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HISTORY OF THE MEXICAN JUDICIARY

LUCIO CABRERA A.

INTRODUCTION

The development of the judiciary[1] in Mexico from 1821, when Mexico achieved its independence, until the present time is the subject of this essay. Parallel to its constitutional history, the growth of the judiciary in Mexico may be divided into two periods: the first from 1821 to 1857, the second from 1857 to the present. During the former period Mexico struggled to find its constitutional structure which eventually emerged in a federal and republican form of government as designed by the 1857 Constitution; during the second period, from 1857 to date, Mexico indulged in a period of internal consolidation and liberal social reforms.[2]

I.

During the first period, it may be said, anarchy reigned throughout the country. There were numerous attempts to draft a constitution for the strife-torn country. Speaking of that era, Emilio Rabasa said: "During the twenty-five years, beginning from 1822, the Mexican nation had seven constituent assemblies which produced one constitutional act, three constitutions and an act of reform. There were two coups d'etat, sundry armed uprisings in the name of popular sovereignty, innumerable manifestations by the people, and an endless line of protests, petitions, manifests, declarations and any and all other ingenious devices that the discontented spirit has been able to invent to cause disorder and create further discontent." Mexico still was in search of its definite political structure. The uncertainty was so grave the very existence of the nation as an independent state was in danger. The main struggle centered around the programs of the two political parties, the Liberal on the one hand, and the Conservative on the other; the first advocated a republican, federal (i.e. de-centralized) form

1. This study will be limited to a discussion of the federal judiciary and will omit a description of the state court system.

2. These periods coincide roughly with those used by Felipe Tena Ramirez; however, this author includes the period from 1808 to 1821 covering the War of Independence and makes the division at 1867 which is the end of the French Intervention and, at the same time, the year when the Constitution of 1857 was reestablished.

of government, while the other favored a strong national government, at first republican and lated monarchic, with aristocratic flavor.

In the second period, from 1857, the political organization of the Mexican nation began to show the characteristic features it now possesses. In 1857 the Liberal Party, controlling the constitutional assembly, succeeded in shaping a new constitution. A republican and federal form of government was adopted and privileges of the Roman Catholic clergy were curtailed. This Constitution was immediately subject to the rigorous test of an embittered civil war that lasted for three years, and later it served as a banner in the fight against the French Intervention. It was during this period that the 1857 Constitution won the support of the great majority of the people. Today, exactly one hundred years later, the same constitutional principles are considered a permanent basis of political life, enriched by the progressive social and economic principles enunciated in the 1917 Constitution, which was a result of the revolution ending the dictatorship of Porfirio Diaz.

The constitutional organization of Mexico has been, in the main, shaped by two factors: on the one hand, the individual features introduced characteristics particular to the Mexican temperament, as well as the political, cultural and social factors of the people; on the other, as an external factor, foreign constitutional ideas were a strong influence. Among these foreign models the most important was the Constitution of the United States; among other foreign patterns, several of the French constitutions, particularly those adopted during the revolution (1791 and 1793), and the Declaration of the Rights of Man (1789) as well as the Spanish Constitution of 1812, must be mentioned. In regard to the judicial organization necessary because of the acceptance of the dual (i.e. national-state) system of government, the influence of the United States was decisive. From there Mexico also derived the idea of the supremacy of the judiciary in general, the prevailing authority of the federal constitution and the control by the judiciary of the other departments of the government.[3]

II.

When the War of Independence began in 1810, the highest courts in New Spain, as Mexico was then called, were the *audiencias*; one was in Mexico City, the other in Guadalajara. The Spanish Constitution of 1812 continued these courts and defined their jurisdiction as final in all ordinary

3. A detailed examination of the stages through which the judiciary passed from 1821 to 1857 will not be undertaken. It may suffice to note that during this period Mexico had six constitutions: the constitutive act of January 31, 1824; the federal constitution of October 4, 1824; the seven constitutional laws of December 29, 1836; the organic bases of June 12, 1843; the act of reforms of May 18, 1847 changing the federal constitution of 1824 as reestablished in 1846; and the bases for the administration of the republic of April 22, 1863.

A complete collection of constitutional documents is available in TENA RAMIREZ, LEYES FUNDAMENTALES DE MEXICO, 1808-1957 (1957).

civil and criminal matters. The Supreme Court of Justice, however, sitting in Spain, decided jurisdictional conflicts between the *audiencias*. In addition to the *audiencias* there were other judges in colonal Mexico, the *jueces de letras* and the *alcaldes*. When in September 1821 Mexico achieved its independence, the administration of justice underwent no immediate changes since the constituent assembly decreed, on February 24, 1822, that the judicial system would consist of "the then existing courts, or of those to be established in the future." This situation continued during the reign of Augustin de Iturbide, except a Supreme Court was created in Mexico to replace the one sitting in Spain. The Constitution of January 31, 1824, introduced the federal system of government[4] and, as a consequence, created a new federal judiciary to be vested in a Supreme Court of Justice; moreover, the several states established their courts through their own constitutions.[5] The subsequent Constitution of 1824 continued, in the main, the dual system of courts already established, but added to the federal judiciary circuit and district courts.

It may be stated in general terms that the colonial system of courts was continued as state courts while the Constitution created a new judicial power, i.e., the federal, with its own court system.

Under the Constitution of 1824 the Federal Supreme Court of Justice was composed of eleven Justices by the legislative bodies of the several states. The Justices were not required to hav a law degree; it was sufficient that they "be trained in the science of law;" they also had tenure in office. The majority of Justices in this period were distinguished personalities, men of culture and honesty, such as Don Manuel de la Peña y Peña, a recognized legal author.[6]

In this period the Supreme Court of Justice decided controversies involving the national government and jurisdictional conflicts between federal and state courts. The Court also exercised important political functions. It had the power to impeach the President and the Vice-president of the Republic, members of the house and the senate, governors of the states and members of the cabinet. The other political function entrusted by the Constitution to the Supreme Court was that its president became a member of a three man committee replacing the President or the Vice-president in case they should be unable to perform their duties.[7]

In 1836 important changes were introduced into the constitutional system. In place of a system based upon the idea of a de-centralized government, with several states sharing governmental functions with the national government, a centralized system of government, with powers held by the

4. Art. 5 states that "[T]he nation adopts a popular federal representative republican form of government."
5. Art. 18 and 23.
6. He was twice acting President of the Republic.
7. Art. 97 to the 1824 constitution.

national government, was created. According to the tenets of the Conservative Party the following aims had to be achieved: "The conservation of the Roman Catholic religion . . . and its faith in all the glory as well as the ecclesiastical property . . . against the idea of de-centralization; against the representative system by elections; against elected municipal governments and against everything called elections by the people . . . ."[8] Under this Constitution the government was organized not in three but in four departments: the executive, exercised by the President; the legislative, entrusted to the house and the senate; the judicial and the supreme conserving power (*supremo poder conservador*)[9]. The judicial power was vested in a Supreme Court of Justice composed of eleven Justices and one attorney general, selected through a process in which the President of the Republic, members of his cabinet, members of the senate and departmental boards participated. The main functions of the Supreme Court were to review decisions of the lower courts, draft and initiate legislation pertaining to judicial matters, publish opinions on the laws enacted by the legislative power and declare their ineffectiveness in case the laws were found unconstitutional, provided the supreme conserving power so requested. This applied also to the acts by the administrative department. The political functions of the Supreme Court under the 1836 Constitution, had been considerably increased. The Court had the power to try by impeachment high officials of the government, including the President of the Republic, members of the supreme conserving power, members of the house and the senate, of the cabinet and the governors. It also had jurisdiction in civil suits against these officers. The Court took part in the electoral proceedings for the President of the Republic and had a voice in ecclesiastical affairs.

It is to be noted that during this period the Supreme Court of Justice enjoyed high prestige. Its intervention in the elections of the President of the Republic were carried out in a true democratic spirit. Th Court courageously defended freedom of the press and persistently protected the independence of judges. One of the Justices deserves to be remembered by name, namely Andreas Quintana Roo, an outstanding public figure.

In 1843 a new constitution was adopted; however, no basic changes were introduced. Among the innovations, the abolition of the supreme conserving power is of interest. In general, the judicial system remained unaltered although it had to be noted that the executive department gained some

8. The quotation represents parts of the political credo of Don Lucas Alaman, a leading member of the Conservative Party and one of Mexico's outstanding statesmen of the past century.

9. The creation of the fourth power was an interesting innovation. The body was given the role of a coordinator and moderator in relation to the other traditional powers of government. It had authority to avoid the acts of these branches, including the Supreme Court and the President of the Republic. It was composed of five members, one of them replaced annually. A civil war, the revolt in Texas and the war against France kept the regime insecure and there was for the fourth power, in spite of its constitutional powers, very little it could do.

influence in the administration of justice. On the other hand, the judiciary was debarassed of some of its political functions. This in turn balanced by the fact that the Supreme Court was no longer amenable to intervention by the supreme conserving power. The structure of federal courts during this period remained basically the same. It was composed of the Supreme Court, superior courts, judges for the *departamientos*, i.e., territorial units equivalent to states, and special courts for matters of finance, commerce and mining.

On August 22, 1846, the Constitution of 1824 was reestablished and amended in less than one year. Once again Mexico had a dual system of courts, i.e., state and federal, with both circuit and district courts functioning as part of the federal judiciary. It is interesting to note that Congress was given the power to declare laws unconstitutional while the Supreme Court retained only the power to submit laws to the congress for such scrutiny. The most notable contribution made by this Constitution to Mexican legal progress was to lay the foundation for the writ of *amparo*, which later became the great bulwark for the protection of human rights and individual freedom.[10]

III.

In the second period the Republic was organized, generally, according to the political philosophy of the Liberal Party. The high mortality rate of constitutions slowed down. Only two new constitutions must be noted: one, that of Emperor Maximilian of Habsburg of 1856, an imposed document, and the other, that of 1917, in force at the present time.

While it is true that internal struggle continued, its political purpose changed. Before 1857 this was to obtain a new constitution based on popular demands. After the adoption of the 1857 Constitution, starting from 1867, the struggle was not against the Constitution but to have the Constitution enforced. The revolution of 1910, and the political movement led by Carranza, demanded that the dead letter of the 1857 Constitution become the true system of government. From this simple purpose, and from the changes in the social and economic outlook of the nation, the 1917 Constitution arose.

This second period in the constitutional development of Mexico (1857-1957) may be divided into two parts, the first from 1857 to 1917, and the other from 1917 to date.

The Constitution of 1857 adopted the idea of the three traditional powers. The executive department of the national government was vested in

10. Art. 25 of these amendments reads as follows: "The courts of the federation shall protect any inhabitant of the republic in the exercise of the rights given him by this Constitution and all the laws enacted in accordance with it, against any encroachment by the legislative or executive branches, of either federal or state governments. They shall limit themselves to giving protection in the particular case and shall not pronounce any general ruling with regard to the law or decree involved in the case."

the President who was elected for your years. In case he was unable to exercise his office, the Chief Justice of the Supreme Court took over since there was no office of the vice-president. The legislative department consisted of one chamber; the judiciary was organized into the supreme, circuit and district courts. Justices of the Supreme Court, eleven in number, were selected by indirect popular elections; they held office for six years.

During this period federal courts performed a double function. Within the ordinary powers of the federal courts[11] were cases arising out of federal law, suits to which the federal government was a party and admiralty matters. The second task given to federal courts was connected with the *amparo*, a writ designed to test the legality of impairment, by governmental action, of legal rights and privileges accorded to individuals, as well as of actions or laws of the federal government infringing upon the rights reserved to states, or of acts by states invading powers granted by the Constitution to the national government.[12] In these situations the court only acted upon a petition by the party directly affected. As a consequence, the judgment rendered only took effect between parties to the *amparo* proceeding and in regard to the interests involved. The decision never affected the governmental act itself, in the sense that it would no longer remain in force.

It is to be pointed out that the 1857 Constitution gave prevailing powers to the legislative branch while it greatly limited the power of the President. Had the Constitution been observed, it would have produced a moderate presidential system. Yet the Constitution was in effect only during short intervals, i.e., from 1867 to 1876 and from 1911 to 1912. Therefore, it may safely be stated that during the years from 1876 through 1910, when Porfirio Diaz was ruling the country, the Constitution was no more than a booklet on dusty shelves.

Regardless of the criticism by Emilio Rabasa directed against this Constitution, it may be stated that the system it inaugurated achieved good results. It is true that Justices of the Supreme Court were elected by popular elections and that the Justices lacked tenure in office. Nevertheless, the work done by the Justices during this period is important, largely because of the outstanding personalities involved, such as Jose Maria Iglesias, Ezequiel Montes, Jose Maria Lofragua and Castilla Velasco.

Considerable difficulties had been created for the court by the constitutional provision that the Chief Justice replace the elected President of the Republic during his absence. In 1877, the great jurist Ignacio L. Vallarta was elected Chief Justice; on his acceptance he demanded that a constitutional amendment be enacted providing for another form of substitution. This was done in 1882 by making the president of the senate the substitute; in 1904

11. Art. 97.

12. This function derives in part from Art. 25 of the fundamental law of 1847 where, as it has been pointed out (see note 10 *supra*) the origin of *amparo* lies.

the office of vice-president was revived. It may be added that in 1874 the bicameral system was introduced.

In this period, from 1857 to 1918, political functions of the Supreme Court were further curtailed. Its duties in connection with presidential elections ceased completely. The power to declare elections to public offices, federal, state or municipal, null and void was abandoned by the Court.[13] This power, originally quite large, involved the Supreme Court in local, state and national politics and was generally considered to be detrimental to the Court's proper function. Therefore, the change was accepted with satisfaction.

While the Court was abandoning powers in one area, it increased its jurisdiction in another, namely in matters of human rights and individual freedoms. The device used was, of course, the writ of *amparo*. One of the principles enforced through *amparo* was that no case, civil or criminal could be decided except in accordance with the applicable law. This principle, emanating from Articles 14 and 16 of the Constitution, made it possible for the federal courts to become, in fact, potential supervisors over all administration of justice in the country, including that exercised by state courts. It may be stated that as a final consequence all administration of justice in Mexico became subject to the federal judiciary wherever *amparo* would lie. In spite of much opposition, including that voiced by Emilio Rabasa, federal courts won this eminent position for the following reasons: the lack of confidence in the impartiality of state courts; an historical trend toward strengthening the central government, in this case the federal judiciary; parallel political tendencies; and, above all, a generally held belief in the value of individual freedoms as against any type of governmental action. So it happened, that from these times on the federal judiciary apparently was more concerned with the protection of individual rights than in enforcement of the Constitution for its own sake.

It is to be emphasized, however, that during this period no administrative tribunals were established. Administration of justice, including control over acts of the administrative authorities, was in the hands of one judiciary, the federal. To create a separate system of courts to adjudicate administrative disputes was held to be contrary to basic principles of the Constitution, particularly the principle of separation of powers.

IV.

In the second part of the period under review, from 1917 to date, the structure of the government may be characterized as one wherein the power

13. Note by translator: In the original text the term *incompetencia de origen* is used. The jurisdiction here dealt with appears to be one similar to that exercised by common law courts in quo warranto.

of the executive has been strengthened as compared with the other departments. As a consequence, the emphasis on the legislative power, established by the 1857 Constitution, has disappeared. Among other signs of this trend, one is important here, namely the right of the President of the Republic to appoint Justices of the Supreme Court with the advice of the senate.

The trend, noticeable heretofore, to restrict political functions exercised by the Supreme Court has continued in spite of the fact that the Court still decides conflicts arising between states and between the states and the national government. It is probably more accurate to say that even these matters presently take, in the consideration of the Court, more the character of the protection of individual rights than that of political privileges; this tendency is still increasing. Through *amparo*, federal courts continue to exercise their penetrating power to void any act of the executive department or even declare legislative enactments inoperative where they are determined unconstitutional or not supported by law and are impairing rights of the complaining individual. Still, federal courts have no powers similar to those vested in the constitutional tribunals in the European sense, to declare laws unconstitutional and, in consequence, deny their validity generally. The same limitations apply in cases where *amparo* is brought against decisions rendered by state courts. This type of activity has increased the work load of the federal judiciary to such an extent that additional auxiliary courts have been created.

Almost two decades after the adoption of the present Constitution it became manifest that no longer could doctrinal grounds prevent the creation of administrative tribunals. Thus, in 1936 the federal tax court was established to adjucate matters of taxes, fines and assessments. It should be made clear, however, that this has not created an independent administrative judiciary since *amparo* is available therefrom to the regular federal courts as to constitutional concerns and, at the same time, questions of constitutionality are within the exclusive jurisdiction of federal courts. It may be said that the system adopted in Mexico in regard to interrelations between the regular courts and the administrative tribunals more closely follows the system adopted in the United States than the one, for example, established in France.

Other specialized courts developed in the field of labor relations. These various types of boards and tribunals decide cases through arbitration and awards or, sometimes, through the judicial decisions. The area remaining closed to judicial action is that of agrarian matters which, according to the position taken by statutes as well as by the judiciary, remains subject to administrative action and administrative adjudication. This is true to such an extent that even *amparo* is rarely used to protect interests in land expopriated in administrative agrarian proceedings. This attitude may best be

explained by a strong desire to see a radical land reform of the property system completed quickly and effectively rather than to face unnecessary delays attendant in the routine administration of justice.

The present federal courts in Mexico are as follows: Supreme Court of Justice, collegiate circuit courts, unified circuit courts and the district courts.

In 1917, the Supreme Court operated with eleven Justices; this number was increased, in 1928, to sixteen and in 1934 to twenty-one. In 1951, five additional Justices were appointed as auxiliaries. Prior to the 1917 Constitution, Justices had life tenure, provided they had been confirmed after six years of service on the bench. In 1928, this rule was changed to an unconditional tenure for life. However, in 1934 the pendulum swung in the opposite direction and Justices served at the pleasure of the President. Ten years later the pendulum swung back.

The Supreme Court may sit en banc or in chambers. The original number of chambers was four; now a fifth chamber has been added, to include the auxiliary Justices. Sitting en banc the Court exercises original jurisdiction in cases of jurisdictional conflicts, where state boundaries are involved and where the federal government is a party. The Court has original as well as appellate jurisdiction. En banc the Court also appoints judges to circuit and district courts and elects its own Chief Justice for one year.

The four original chambers each sit on one of the following: criminal administrative, civil (including commercial) and labor. The auxiliary chamber decides cases left too long on the docket; its members may also be substituted for absent members of other chambers.

The circuit courts have been established in five principal parts of the Republic. Each court has three judges exercising appellate jurisdiction over district courts. These intermediate courts were created in 1951 to alleviate the exceedingly heavy case load of the Supreme Court, due particularly to the ever expanding *amparo* litigation. The other type of circuit courts, with one judge, are six in number and exercise appellate jurisdiction.

District courts, numbering about fifty, exercise original jurisdiction. In criminal cases involving national security or wrongdoing by administrative officials, district judges are assisted by juries (*jurado popular*) of seven citizens who are drawn by lot. In all other cases district judges sit without a jury.

In general, it may be stated that federal courts have two main areas of jurisdiction. The first is the original jurisdiction based on Article 104 of the Constitution;[14] this includes matters arising from the application of federal

14. "The federal courts shall have jurisdiction over: (1) controversies, civil as well as criminal, arising out of the enforcement or application of federal laws or from treaties made with foreign nations. Where such controversies affect only interests of private parties, they may be decided by local judges and state courts of general

laws, cases where the federal government is a party, and cases where foreign diplomatic or consular officials are involved. The other part is based on Article 103[15] of the Constitution, namely constitutional adjudication, which is mainly the *amparo* proceedings. It may be added that the Supreme Court and district courts have jurisdiction in both areas. The collegiate circuit courts exercise appellate jurisdiction in constitutional matters, while unitary circuit courts are limited to ordinary appellate jurisdiction.

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jurisdiction, or by those of the Federal District and the territories, at the election of the plaintiff. Judgments may be appealed to courts immediately superior to the judge who decided the case in the lower court (text as amended in 1934). In cases in which the federal government is interested, appeals (*recursos*) may be made available by law to the Supreme Court of Justice against appellate decisions or against decisions rendered by administrative tribunals established by federal law, provided always that these tribunals had the authority to decide these cases (text as amended in 1946). (2) All controversies involving maritime law. (3) Controversies to which the federal government is a party. (4) Controversies arising between two or more states, or one state and the federal government, as well as those arising between the courts of the Federal District and other federal courts, or state courts. (5) Controversies arising between one state and one or more residents of another state; and (6) cases concerning members of the diplomatic and consular corps."

An up-to-date translation of the Constitution is available in the publication by the PAN AMERICAN UNION, CONSTITUTION OF THE UNITED MEXICAN STATES 1917 (1957).

15. "Federal courts shall have jurisdiction over cases arising out of (1) laws or acts of public authorities violating individual guarantees; (2) laws and acts of the federal authorities violating or restricting the sovereignty of states; (3) laws and acts of states invading the area of federal authority." Additional provisions are contained in Article 107 which provides: "All controversies mentioned in Article 103 shall be decided in accordance with proceedings and forms as prescribed by law and upon the following principles: (1) *amparo* judgments shall be rendered only upon petition of the party affected; (2) the judgment shall be limited to those individuals giving them redress and protection in the particular situation before the court without ruling in a general way as to the law or act underlying the action" (text as amended in 1951).

For the complete text, see translation cited in note 14 *supra*.